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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,968	04/14/2006	Marco Poppi	1034170-000031	5120
21839 7590 07/30/2009 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404				
EXAMINER WEEKS, GLORIA R				
ART UNIT 3721		PAPER NUMBER		
NOTIFICATION DATE 07/30/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

# Office Action Summary

**Application No.**

10/575,968

**Applicant(s)**

POPPI, MARCO

**Examiner**

GLORIA R. WEEKS

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment and remarks received on April 16, 2009.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 15, 2009 has been entered.

#### ***Claim Rejections - 35 USC § 103***

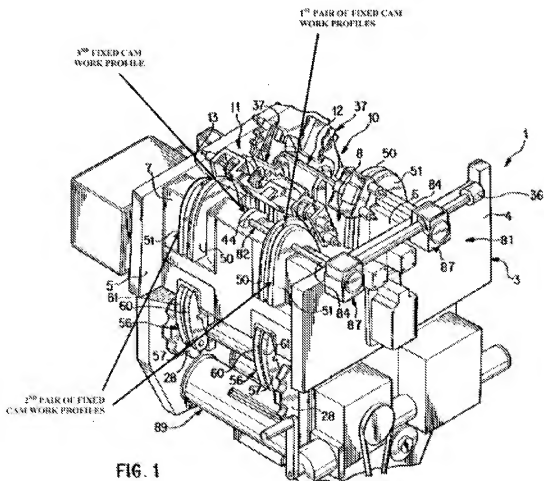
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fontanazzi (USPN 6,038,838) in view of Abate (USPN 5,001,891).

In reference to claims 11-18 and 21-24, Fontanazzi discloses a form-and-seal unit comprising: a fixed structure 6, 7 symmetrically positioned relative to a vertical longitudinal plane; forming means which interact cyclically with a tube of packaging material 14, the forming means comprise at least two pairs of jaws 12, 13 having sealing means 29, 35 movable between an open position (figure 5) and a closed position (figure 6); respective pairs of forming flaps 20 carried by the respective jaws 12, 13, and having respective half-shell forming portion 37 capable of defining various volumes/types of packages (column 1 lines 57-65); a first pair of

fixed cam plates 50 and a second pair of fixed cam plates 51, each pair of cam plates thereby defining a first and second pair of work profiles 50a, 50b, 51a, 51b (*see diagram below*), wherein the first and second work profiles define a top cam profile 50a, 51a, spaced a distance from the vertical longitudinal plane and oriented to guide the forming flaps such that they approach the tube of packaging material 14, the fixed cam further having a bottom cam profile 50b, 51b, 79, 80 spaced a second and different distance from the vertical longitudinal plane with respect to the top cam profile (figure 2); and a first pair of cam follower rollers 52 spaced apart and carried by/mounted on each forming flap 20, as well as a second pair of cam follower rollers 53 on each forming flap 20.



Abate teaches a form-and-seal unit comprising: a plurality of paired forming flaps 2 of a first size, wherein the size of the paired forming flaps can be varied by a spring biased plate 13 of the forming flaps, such that regardless of the size of the plurality of forming flaps, each pair of forming flaps engage a fixed cam plate 12. It would have been obvious to one having ordinary skill in the art the time of the invention to modify the form flaps of Fontanazzi to include an adjustable plate, since column 2 lines 63- column 3 line 14 of Abate state that such a modification allows for a quick change in the volume of the packages formed without requiring a change in the fixed cam structure of the apparatus.

Regarding claims 19 and 20, Fontanazzi discloses a form-and-seal unit comprising: a fixed structure 6, 7 symmetrically positioned relative to a vertical longitudinal plane; forming means which interact cyclically with a tube of packaging material 14, the forming means comprise at least two pairs of jaws 12, 13 having sealing means 29, 35 movable between an open position (figure 5) and a closed position (figure 6); respective pairs of forming flaps 20 carried by the respective jaws 12, 13, and having respective half-shell forming portion 37 capable of defining various volumes/types of packages (column 1 lines 57-65); a first fixed cam plate 50 and a second of fixed cam plates 51, each pair of cam plates thereby defining a first and second pair of work profiles 50a, 50b, 51a, 51b (*see diagram below*), wherein the first and second work profiles define a top cam profile 50a, 51a, spaced a distance from the vertical longitudinal plane and oriented to guide the forming flaps such that they approach the tube of packaging material 14, the fixed cam further having a bottom cam profile 50b, 51b, 79, 80 spaced a second and different distance from the vertical longitudinal plane with respect to the top cam profile (figure 2); and a first pair of cam follower rollers 52 spaced apart a first distance and carried by/mounted on each forming flap 20, as well as a second pair of cam follower rollers 53 on each

forming flap 20 spaced a second distance apart, wherein the second distance is different from the first distance.

The first cam plate 50 lies in a first plane and parallel and adjacent to the second cam plate 51, such that a second plane that is perpendicular to the first plane and intersects both the first cam plate 50 and the second plate 51. Although Fontanazzi discloses a surface of the fixed cam plate 50 defining the first cam profile engaged with a surface of the second cam plate 51 defining the second cam profile, Fontanazzi does not disclose the first and second cam profiles to be defined by a single plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a single plate defining the first and second cam profiles rather than two separate plates, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.<sup>1</sup>

Abate teaches a form-and-seal unit comprising: a plurality of paired forming flaps 2 of a first size having a cam roller 10, wherein the size of the paired forming flaps can be varied by a spring biased plate 13 of the forming flaps, such that regardless of the size of the plurality of forming flaps, each pair of forming flaps engage a fixed cam plate 12. It would have been obvious to one having ordinary skill in the art the time of the invention to modify the form flaps of Fontanazzi to include an adjustable plate, since column 2 lines 63- column 3 line 14 of Abate state that such a modification allows for a quick change in the volume of the packages formed by the apparatus without replacing the cam plates. Such a modification of Fontanazzi would not require the distance between the first and second profiles to change, thereby maintaining a fixed relationship between the first and second cam profiles.

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<sup>1</sup> *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

***Response to Arguments***

5. Applicant's arguments with respect to claims 11-21 have been considered but are moot in view of the new ground(s) of rejection.

Fontanazzi discloses an apparatus comprising a plurality of paired forming flaps, each pair of forming flaps having a first pair of cam rollers that engage a first pair of cam profiles, and a second pair of cam rollers that engage a second pair of cam profiles; wherein the respective pairs of rollers and profiles are spaced differently from one another. Although the size of the forming flaps change, the arrangement of the cam rollers and the cam profiles is maintained, such that the apparatus is capable of forming packages of various volumes.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 7am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/

Examiner, Art Unit 3721

/Rinaldi I Rada/

Supervisory Patent Examiner, Art Unit  
3721

July 28, 2009